IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 235 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

VALLABHDAS P SHAH

Versus

GUJ MARITIME BOARD

Appearance:

1. Special Civil Application No. 235 of 1988

MR KIRIT I PATEL for Petitioner No. 1

MR SB VAKIL for Respondents No. 1-2

MR AJ DESAI AGP for Respondents No. 1,3-3

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 19/10/2001

C.A.V. JUDGEMENT

1. The petitioner, an Executive Engineer originally appointed by the State Government and permanently

absorbed in the service of the Gujarat Maritime Board, has approached this Court, under Article 226 of the Constitution, with a prayer to set aside the chargesheet dated 7.3.1979 and the order dated 11.1.1988 removing him from service as also the order dated 25.8.1988 whereby his appeal was partly allowed and the punishment was reduced to stoppage of four increments with permanent effect. While admitting the petition on 13.12.1990, the operation of the last mentioned order was, by way of interim relief, stayed on the condition of the petitioner filing an undertaking that in the event of his losing this petition, the amount which might be recoverable pursuant to the impugned order would be paid up by him forthwith with interest @ 12% per annum.

2. The departmental enquiry against the petitioner was initiated by the impugned order dated 7.3.1979 on the basis of the charges that he had caused additional expense of Rs.1,14,594/- by recommending higher rates for the supply of stones and caused the loss of revenue by departmentally undertaking the transportation rather than giving the machinery on rent to the contractor. At the end of the enquiry held against the petitioner, the Enquiry Officer had recorded a finding that the charges levelled against the petitioner were not proved. The enquiry into the charges levelled in March 1979 was instituted in November 1986 and the enquiry report, as above, was submitted in June 1987. The Chairman of the respondent Board, by his detailed order dated 11.1.1988, differed from the findings of the Enquiry Officer and, holding that both the charges against the petitioner were proved, took the impugned action of removal of the petitioner from service. The petitioner had approached this Court in January 1988. A combined order dated 25.8.1988 deciding upon the requisite approval of the action of removal as also the departmental appeal preferred by the petitioner was made whereby the Government reduced the punishment to stoppage of four increments with permanent effect. Thus, the final order which remained effective was the latter order dated 25.8.1988 which also is under challenge by virtue of amendment of the petition.

3. The above orders of punishment are assailed on several grounds each of which need not be dealt with as the impugned orders are liable to be quashed only on the main ground of violation of principles of natural justice in arriving at the conclusion that the charges against the petitioner were proved.

4. There is no dispute about the fact that while

differing from the report and findings of the Enquiry Officer and passing the order of removal from service, the disciplinary authority, i.e., the Chairman of the respondent Board, had not given any opportunity of hearing to the petitioner. In a recent judgment of the Apex Court in YOGINATH D. BAGDE v. STATE OF MAHARASHTRA [1999 (7) SCC 739], after referring to several earlier judgments, it is held and observed as under:

"31. In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the enquiry officer into the charges levelled against him but also at the stage at which those findings are considered by the disciplinary authority and the latter, namely, the disciplinary authority, forms a tentative opinion that it does not agree with the findings recorded by the enquiry officer. If the findings recorded by the enquiry officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the disciplinary authority has proposed to disagree with the findings of the enquiry officer. This is in consonance with the requirement of Article 311 (2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the disciplinary authority doe not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the disciplinary authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent upto the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment

or service rule including rules made under Article 309 of the Constitution."

5. Applying the above principle, the finding of the disciplinary authority that the charges against the petitioner stood proved cannot be sustained and consequently any punitive action taken on the basis of such finding can also not be sustained. The learned senior counsel appearing for the respondent Board made an attempt to save the situation by submitting that the ultimate effective order of punishment was only that of stoppage of four increments with permanent effect which was not a major penalty and for the imposition of which even an enquiry was not necessary under the provisions of Rule 9 of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971.

6. It is a well-settled position of law that for application of the principles of natural justice, it is not necessary that there must be a specific provision in a statute to that effect. Rule 6 of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971 enumerates minor and major penalties which may be imposed for good and sufficient reasons. The `good and sufficient reason' in a given case can be the `proved misconduct' which, in turn, must have been established after following the principles of natural justice. As observed by the Apex Court in YOGINATH D. BAGDE (supra), "where the rules are in this regard silent and the disciplinary authority also does not give an opportunity of hearing to the delinquent officer and records findings different from those of the enquiring authority that the charges were established, "an opportunity of hearing" may have to be read into the rule by which the procedure for dealing with the enquiring authority's report is provided principally because it would be contrary to the principles of natural justice if a delinquent officer, who has already been held to be "not guilty" by the enquiring authority, is found "guilty" without being afforded an opportunity of hearing on the basis of the same evidence and material on which a finding of "not guilty" has already been recorded." Thus, in the facts of the present case, the respondents cannot get away with the plea that the enquiry itself was not necessary as ultimately the punishment was reduced to a minor penalty of withholding increments. If the enquiry and its findings were to be altogether discarded, there remains no material, much less good and sufficient reasons, for imposition of any penalty.

7. Therefore, the impugned orders of punishment

dated 11.1.1988 and 25.8.1988 are not sustainable in law and hence set aside. The petition is accordingly allowed and Rule is made absolute to that extent with, in the facts and circumstances, no order as to costs.

8. In view of the long pendency of the petition, the respondents are directed to make appropriate orders in light of the above observations and the consequential order, within three months of the receipt of a certified copy of this order.

Sd/-
(D.H.Waghela,J.)
(KMG Thilake)